

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

DARRELL H. LEE, as Personal Representative  
of HAROLD LEE, Deceased,

Plaintiff,

v.

CIV 15-0405 KG/KBM

CITY OF GALLUP, a Municipal Corporation  
of the State of New Mexico; et al.,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO LIFT STAY**

THIS MATTER comes before the Court on Plaintiff's Motion for Reconsideration or In the Alternative, Motion to Lift the Stay (*Doc. 23*), filed July 10, 2015. Plaintiff failed to file a timely reply in support of his Motion for Reconsideration within the time prescribed, which constitutes consent that the briefing on the motion is complete pursuant to the Court's Local Rules. See D.N.M.LR-Civ. 7.1(b).

In the present motion, Plaintiff asks the Court to reconsider its Order Granting Stay of Proceedings. In that Order, the Court reasoned that Defendants were entitled to a resolution of County Defendant's Motion to Dismiss, which was based in part upon an assertion of qualified immunity, before undertaking the burdens of discovery and litigation. *Doc. 19* at 3.

In this Motion for Reconsideration, Plaintiff argues that he had not intended to assert any claims under 42 U.S.C. § 1983 against County Defendants, making

the asserted qualified immunity defense inapplicable. County Defendants, in their response, indicated that they were opposed to Plaintiff's Motion for Reconsideration "until such time as the Plaintiff files a stipulation of dismissal with prejudice of [any § 1983 claims] against the County Defendants." *Doc. 25.*

On August 11, 2015, however, the presiding judge in this matter, The Honorable Kenneth J. Gonzales, issued an order dismissing with prejudice any § 1983 claims against County Defendants based upon Plaintiff's representations to the Court that he had not asserted any such claims. *Docs. 26 & 27.* Given that County Defendants' opposition to Plaintiff's Motion for Reconsideration was conditioned upon the absence of a formal dismissal with prejudice of any § 1983 claims against County Defendants and that any such claims have now been formally dismissed by the presiding judge, the Court is persuaded that the stay of discovery should be lifted. The Court will, by separate order, issue an Initial Scheduling Order in this matter.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion for Reconsideration (*Doc. 23*) is granted and that the stay of discovery is hereby lifted.

  
UNITED STATES CHIEF MAGISTRATE JUDGE